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JUL 24 2006

OFFICE OF PETITIONS

In re Application of :
Ragae Ghabrial et al. :
Application No. 10/749,192 : DECISION ON PETITION
Filing Date: December 31, 2003 : UNDER 37 C.F.R. § 1.137(B)
Attorney Docket Number: LFS5029 :
Title: METHOD FOR INCORPORATION :
OF BIOACTIVES INTO A POROUS :
HYDROPHOBIC POLYMER SCAFFOLD :
:

This is a decision on the petition under 37 CFR §1.137(b)¹, filed April 25, 2006, to revive the above-identified application.

The above-identified application became abandoned for failure to reply in a timely manner to the Notice of Missing Parts (notice), mailed March 10, 2004, which set a shortened statutory period for reply of two (2) months. No response was received, and no extensions of time under the provisions of 37 C.F.R. §1.136(a) were requested. Accordingly, the above-identified application became abandoned on May 11, 2004. A notice of abandonment was mailed on June 9, 2005.

37 C.F.R. §1.137(b)(3) requires a statement that the entire delay in filing the required reply from the due date for the reply

¹ A grantable petition pursuant to 37 CFR 1.137(b) must be accompanied by:

- (1) The reply required to the outstanding Office action or notice, unless previously filed;
- (2) The petition fee as set forth in § 1.17(m);
- (3) A statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional, and;
- (4) Any terminal disclaimer (and fee as set forth in § 1.20(d)) required pursuant to paragraph (d) of this section.

until the filing of a grantable petition pursuant to 37 C.F.R. §1.137(b) was unintentional. Since the statement contained in the instant petition varies from the language required by 37 C.F.R. §1.137(b)(3), the statement contained in the instant petition is being construed as the statement required by 37 C.F.R. §1.137(b)(3) and petitioner must notify the Office if this is not a correct interpretation of the statement contained in the instant petition.

With the present petition, Petitioner has submitted the petition fee, a statement which is being construed as the proper statement of unintentional delay, a declaration, and the fee associated with the late submission of the same. Petitioner has met all requirements for a grantable petition under 37 C.F.R. §1.137(b).

As such, the petition is **GRANTED**.

The Office of Initial Patent Examination will be notified of this decision.

It is noted that Petitioner has further filed a terminal disclaimer and the associated fee, when a terminal disclaimer is not required². As such, the terminal disclaimer filed April 25, 2006, will not be entered. The terminal disclaimer fee has not been charged to Petitioner's deposit account.

Petitioner has also submitted a four-month extension of time. An extension of time under 37 C.F.R. §1.136 must be filed prior to the expiration of the maximum extendable period for reply³. Accordingly, since the \$ 1,590 extension of time submitted with the petition on April 25, 2006 was subsequent to the maximum extendable period for reply, this fee is unnecessary and will be credited to Petitioner's deposit account.

The general phone number for the Office of Petitions which should be used for status requests is (571) 272-3282. Telephone inquiries regarding this decision should be directed to the undersigned at (571) 272-3225.



Paul Shanoski
Senior Attorney
Office of Petitions
United States Patent and Trademark Office

² See 37 C.F.R. §1.137(d)(1).

³ See In re Application of S., 8 USPQ2d 1630, 1631 (Comm'r Pats. 1988).